



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN 20 2000

US EPA RECORDS CENTER REGION 5



REPLY TO THE ATTENTION OF

FACSIMILE (630)739-4455
AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED

HS-6J

Messrs. Dennis and Daniel Egan
Egan Marine Inc./Service Welding and Shipbuilding
P.O. Box 669
Lemont, Illinois 60439

Re: Egan Marine Inc./Service Welding and Shipbuilding in Lemont, Illinois
Waste Oil Pit Potential Discharge to Chicago Sanitary & Ship Canal

CWA-5- 2000-008

Dear Messrs. Egan and Egan:

Enclosed is a Unilateral Administrative Order ("UAO"), pursuant to Section 311 of the Clean Water Act ("CWA"), 33 U.S.C. § 1321. This UAO orders Egan Marine, Inc. and Service Welding and Shipbuilding ("Egan/Service") to undertake the removal actions determined by the United States Environmental Protection Agency ("U.S. EPA") to be necessary to address the potential waste oil pit discharge to Chicago Sanitary & Ship Canal from the Egan/Service facility in Lemont, Illinois. In addition, the UAO orders you to reimburse the United States for its costs of monitoring and overseeing the removal actions performed under this UAO and the costs which the United States has already incurred at said site.

If you have any questions or concerns, please call Thomas J. Martin, Associate Regional Counsel, at (312) 886-4273.

Sincerely,

for William E. Muno, Director
Superfund Division

Enclosure

CWA-5- 2000-008

Docket No.

ADMINISTRATIVE ORDER
PURSUANT TO SECTION 311
OF THE CLEAN WATER ACT,
33 U.S.C. § 1321

Respondents.

This Order is issued by the United States Environmental Protection Agency ("U.S. EPA") to Egan Marine Corporation and Service Welding and Shipbuilding (collectively, the "Respondents"). The Order is issued pursuant to the authority vested in the President of the United States by Section 311(c), (e), and (m) of the Clean Water Act ("CWA"), 33 U.S.C. § 1321(c), (e) and (m). This authority has been delegated to the Administrator of the U.S. EPA by Executive Order 12777 (October 22, 1991), and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 2-85, 2-89, and 2-13, and to the Director of the Waste Management Division by a Regional Delegation, dated September 17, 1992. Effective October 1, 1995, the authority was redelegated from the Director of the Waste Management Division to the Director of the Superfund Division.

This Order provides for performance of removal actions at a defined portion of the approximately 15.3 acre property known as the Egan Marine, Corp./Service Welding and Shipbuilding (“Egan/Service”) facility in Lemont, Illinois (the “Facility”). This Order requires Respondents to conduct removal actions described below to abate an imminent and substantial threat to the public health or welfare of the United States, including fish, shellfish, and wildlife, public and private property, shorelines, beaches, habitat, and other living and nonliving natural resources under the jurisdiction or control of the United States, because of an actual or threatened discharge of oil from a facility in violation of Section 311(b) of CWA, 33 U.S.C. § 1321(b).

II. PARTIES BOUND

This Order applies to and is binding upon Respondents and Respondents' heirs, receivers, trustees, successors and assigns. Any change in ownership or corporate status of the Respondents, including, but not limited to, any transfer of assets or real or personal property shall not alter Respondents' responsibilities under this Order. Respondents are jointly and

severally liable for carrying out all activities required by this Order.

Respondents shall ensure that their contractors, subcontractors, and representatives comply with this Order. Respondents shall be responsible for any noncompliance with this Order.

III. FINDINGS OF FACT

Based on available information, U.S. EPA finds that:

1. The Egan/Service Facility is located northeast of Lemont, Illinois. The Facility is situated on two connecting peninsulas, designated as the east and the west peninsulas, formed from rock quarries. The Egan/Service Facility is operated by Dennis and Dan Egan. It is operated 24 hours a day and employs 30-50 people. The Metropolitan Water Reclamation District of Chicago owns the land and leases to Egan/Service. The street address of the Facility is 15200 East Canal Bank Road. The mailing address is P.O. Box, 669, Lemont, IL 60469.
2. The Facility consists of numerous oil storage tanks of volumes greater than 10,000 gallons, numerous 55 gallon drums, and portable tanks. Oil storage tanks are located on both peninsulas.
3. The Facility borders the Chicago Sanitary Drainage and Ship (CSDS) canal, at mile marker 301.3 (latitude 41 degrees 41' 06.4" N longitude 87 degrees 59' 15.9" W). The CSDS canal in turn is a tributary to the Des Plaines River.
4. On information and belief, Egan/Service engages in the following operational activities at the Facility: stores, processes and sells "edible grade" vegetable-based oil (commonly known as soybean mash) for animal feed; transports materials such as asphalt (primary product) received mainly from petroleum refining industries by barges for distribution by Egan/Service to customers who use the asphalt for paving roads and highways; maintains and repairs tugboats and barges, and provides emergency response services.
5. On October 4, 1999, U.S. EPA investigated a call from the U.S. Coast Guard (USCG) regarding a potential release at the Egan/Service Facility observed on October 1, 1999. During this investigation, U.S. EPA observed several drums in various stages of deterioration located throughout the Facility. On that date, U.S. EPA issued a Notice of Violation in an Oil Pollution Incident letter to Dennis Egan. Mr. Egan informed U.S. EPA that the drums in various stages of deterioration located throughout the site would be properly contained and disposed.
6. On October 7, 1999, the USCG inspected the Facility and observed a waste pile containing drums, oil and oil contaminated soils and other items such as cash registers, site trash and debris and located in close proximity to the CSDS canal (see attached map). At that time, U.S. EPA issued a verbal stop operations to Ms. Robin Chanda, Secretary and Treasurer for the Facility.
7. On October 18, 1999, U.S. EPA issued pursuant to Section 311(c), 33 U.S.C. § 1321(c), a

Notice of Federal Interest in an Oil Pollution Incident to the Respondents determining that Respondents must properly remove and dispose of the deteriorating drums and visibly contaminated waste soils in the waste pile area at the Facility to mitigate the discharge or threat of a discharge to navigable waters.

8. On October 21, 1999, U.S. EPA conducted an Spill Prevention, Containment and Countermeasure (SPCC) inspection at the Facility.

9. On October 28, 1999, U.S. EPA conducted a site assessment at the Facility to identify the presence of hazardous materials. The site assessment report was finalized in March, 2000. Samples taken of the waste materials located in the waste pit indicate the presence of polychlorinated biphenyls (PCBs), semivolatile organic (SVOCs), and low levels of metals, lead and barium.

10. On November 10, 1999, U.S. EPA issued a letter directing Mr. Egan to perform preventative measures necessary to stabilize the waste pit area until the U.S. EPA site assessment was completed.

11. The oil-contaminated soils and materials in the waste pile at the Facility are located within 95 feet of the CSDS canal. Due to the proximity of the waste pile to the canal, and its exposure to the weather and other outdoor elements, oil and other pollutants or contaminants may migrate and be released off-site and into the CSDS canal and the Des Plaines River.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, U.S. EPA has determined that:

12. The Facility is an "onshore facility" as defined by Section 311(a)(10) of CWA, 33 U.S.C. § 1321(a)(10), and by Section 1001(24) of the Oil Pollution Act ("OPA"), 33 U.S.C. § 2701(24).

13. Respondents are each a "person" as defined by Section 311(a)(7) of CWA, 33 U.S.C. § 1321(a)(7), and by Section 1001(27) of OPA, 33 U.S.C. § 2701(27).

14. Respondents are each an "owner or operator" of the Facility as defined by Section 311(a)(6) of CWA, 33 U.S.C. § 1321(a)(6), and by Section 1001(26) of OPA, 33 U.S.C. § 2701(26).

15. A "removal" as defined in Section 311(a)(8) of CWA, 33 U.S.C. § 1321(a)(8), and Section 1001(30) of OPA, 33 U.S.C. § 2701(30), is necessary at the Facility to minimize and mitigate damage to the public health or welfare.

16. An actual or threatened "discharge" as defined in Section 311(a)(2) of CWA, 33 U.S.C. § 1321(a)(2) and Section 1001(7) of OPA, 33 U.S.C. § 2701(7), and 40 C.F.R. § 110.1, is

occurring or has occurred at or from the Facility.

17. The material contaminating the soil and other items in the waste pit on the Facility is an "oil" as defined in Section 311(a)(1) of CWA, 33 U.S.C. § 1321(a)(1) and Section 1001(23) of OPA, 33 U.S.C. § 2701(23), and is currently present at the Facility.

18. The CSDS canal and Des Plaines River are "navigable waters" of the United States as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and Section 1001(21) of OPA, 33 U.S.C. § 2701(21).

19. The CSDS canal and Des Plaines river are "natural resources" within the meaning of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. § 300.5, and Section 1001(20) of OPA, 33 U.S.C. § 2701(20).

20. "Natural resources," as defined in the NCP, 40 C.F.R. § 300.5, and Section 1001(20) of OPA, 33 U.S.C. § 2701(20), may be affected by the discharge at or from the Facility.

21. The Facility may pose an imminent and substantial threat to the public health or welfare of the United States because of an actual or potential discharge of oil from the Facility in violation of Section 311(b) of CWA, 33 U.S.C. § 1321(b).

22. There is or has been a release of regulated substances into the environment from the facility owned by Respondent.

23. The measures set forth in this Order are necessary to protect human health and the environment and to abate, minimize, stabilize, mitigate or eliminate the discharge or threat of a discharge of oil at or from the Facility.

24. Under Section 1002(b)(1) of OPA, 33 U.S.C. § 2702(b)(1), Respondent is liable to the United States Government for all removal costs incurred by the United States in connection with the Facility.

25. Under Section 311(b) of CWA, 33 U.S.C. § 1321(b), Respondent may be subject to a civil penalty in an amount up to \$27,500 per day of violation or an amount up to \$1,100 per barrel of oil discharged.

V. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, U.S. EPA hereby orders Respondents to comply with the following provisions, including but not limited to all documents attached to or incorporated into this Order, and perform the following actions:

1. Notice of Intent to Comply

Respondents shall notify EPA in writing within 3 business days after the effective date of this Order of Respondents' irrevocable intent to comply with this Order. Failure of any Respondent to provide such notification within this time period shall be a violation of this Order.

2. Designation of Contractor, Project Coordinator, and On-Scene Coordinator

Respondents shall retain (a) contractor(s) to or itself investigate the source and extent of contamination and to implement the removal actions to abate the actual, or threat of an, ongoing discharge to the CSDS canal. Respondents shall notify U.S. EPA of the name and qualifications of such contractor(s) within 5 business days of the effective date of this Order. Respondents shall also notify U.S. EPA of the name and qualifications of any other contractors or subcontractors retained to perform work under this Order. U.S. EPA retains the right to disapprove any of the contractors and/or subcontractors retained by the Respondents. If U.S. EPA disapproves a selected contractor, Respondents shall retain a different contractor within 3 business days following U.S. EPA's disapproval and shall notify U.S. EPA of that contractor's name and qualifications within 4 business days of U.S. EPA's disapproval.

Within 5 business days after the effective date of this Order, the Respondents shall designate a Project Coordinator who shall be responsible for administration of all the Respondents' actions required by the Order. Respondents shall submit the designated coordinator's name, address, telephone number, and qualifications to U.S. EPA. To the greatest extent possible, the Project Coordinator shall be present on-site or readily available during site work. U.S. EPA retains the right to disapprove of any Project Coordinator named by the Respondents. If U.S. EPA disapproves a selected project coordinator, Respondents shall retain a different Project Coordinator within 3 business days following U.S. EPA's disapproval and shall notify U.S. EPA of that person's name and qualifications within 4 business days of U.S. EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from U.S. EPA relating to this Order shall constitute receipt by Respondents.

The U.S. EPA has designated Anita Boseman of the Emergency Response Branch, Region 5, as its On-Scene Coordinator ("OSC"). Respondents shall direct all submissions required by this Order to the OSC at: U.S. Environmental Protection Agency, Emergency Response Section, 77 West Jackson Boulevard, Mail Code SE-5J, Chicago Illinois 60604-3590, by certified mail, express mail, or commercial courier service with a copy to Thomas Martin, U.S. Environmental Protection Agency, Office of Regional Counsel, 77 West Jackson Boulevard, Mail Code C-14J, Chicago Illinois 60604-3590, by regular mail. Respondents are encouraged to make their submissions to U.S. EPA on recycled paper (which includes significant postconsumer waste paper content where possible) using two-sided copies.

U.S. EPA and Respondents shall have the right, subject to the preceding paragraph, to change

their respective designated OSC or Project Coordinator. U.S. EPA shall notify the Respondents, and Respondents shall notify U.S. EPA, as early as possible before such a change is made, but in no case longer than 24 hours after such a change. The initial notification may be made orally, but it shall be promptly followed by a written notice.

3. Work to Be Performed

1. The Respondents shall perform, at a minimum, the following removal actions and supporting activities at the Facility:

- a. Define and characterize the extent of, and remove and properly dispose of the “waste oil pile” located on the western peninsula of the Facility, as depicted in the map attached to this UAO;
- b. Remove and properly dispose of in accordance with applicable laws and regulations the vertical aboveground storage tanks and their contents located on both the western and eastern peninsula, as depicted in the map attached to this UAO;
- c. During the removal activities required pursuant to subparagraphs a. and b. above, install and maintain a contaminant control area and a oil migration barrier or collection area to prevent the migration or release of contaminants and oil from all removal areas;
- d. Develop, prepare, implement and comply with a Health & Safety Plan;
- e. Develop, implement and comply with a Demobilization/Decontamination Plan as part of the Work plan; and
- f. Prepare and if necessary construct access roads, staging areas and other infrastructure necessary to perform work.

3.1 Work Plan and Implementation

Within 5 business days after the effective date of this Order, the Respondents shall submit to U.S. EPA for approval a draft Work Plan for performing the removal activities set forth in subparagraph 3, above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the activities required by this Order.

U.S. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If U.S. EPA requires revisions, Respondents shall submit a revised draft Work Plan within seven business days of notification. Respondents shall implement the Work Plan as finally approved by U.S. EPA in accordance with the schedule approved by U.S. EPA. The approved Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order.

Respondents shall not commence or undertake any future removal actions at the Facility without prior U.S. EPA approval.

3.2 Health and Safety Plan

An approved site health and safety plan shall be in effect before any significant clean up activities commence. The Respondents shall submit for U.S. EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Order. This plan shall comply with applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If U.S. EPA determines it is appropriate, the plan shall also include contingency planning.

Respondents shall incorporate all changes to the plan recommended by U.S. EPA, and implement the plan during the removal action.

3.3 Quality Assurance and Sampling

All sampling and analyses performed pursuant to this Order shall conform to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondents shall develop a plan to ensure the sampling and laboratory analysis complies with U.S. EPA QA/QC guidance.

Upon request by U.S. EPA, Respondents shall have such a laboratory analyze samples submitted by U.S. EPA for quality assurance monitoring. Respondents shall provide to U.S. EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Respondents shall also ensure provision of analytical tracking information consistent with the NCP and may use OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites" as guidance.

Upon request by U.S. EPA, Respondents shall allow U.S. EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent or its contractors or agents while performing work under this Order. Respondents shall notify U.S. EPA not less than three business days in advance of any sample collection activity. U.S. EPA shall have the right to take any additional samples that it deems necessary. U.S. EPA shall give Respondents advance notice of such activity so that they may take split and/or duplicate samples.

3.4 Reporting

Respondents shall submit a biweekly written progress report to U.S. EPA concerning actions undertaken pursuant to this Order, beginning 14 calendar days after the effective date of this Order and continuing until the termination of this Order, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the

reporting period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

Respondents shall, at least 30 days prior to the conveyance of any interest in real property at the Facility, give written notice of this Order to the transferee and written notice of the proposed conveyance to U.S. EPA and the State. The notice to U.S. EPA and the State shall include the name and address of the transferee. The party conveying such an interest shall require that the transferee will provide access as described in Section V.4 (Access to Property and Information).

The OSC may request weekly reports when the activities at the site warrant a higher reporting frequency.

3.5 Final Report

Within 90 calendar days after completion of construction and implementation of the removal actions required under this Order, Respondents shall submit for U.S. EPA review a Final Report summarizing the actions taken to comply with this Order. The Final Report shall conform to the requirements set forth in Section 300.165 of the NCP, 40 C.F.R. § 300.165. The Final Report shall also include a good faith estimate of total costs incurred in complying with the Order, a listing of quantities and types of materials removed off-site or handled on-site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits).

The Final Report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

4. Access to Property and Information

Respondents shall provide or obtain access to the Facility and off-site areas to which access is necessary to implement this Order, and shall provide access to all records and documentation related to the conditions at the Facility and the actions conducted pursuant to this Order. Such access shall be provided to U.S. EPA, the USCG, the U.S. Fish and Wildlife Service, and their employees, contractors, agents, consultants, designees, representatives, and State of Illinois representatives. These individuals shall be permitted to move freely at the Facility and appropriate off-site areas in order to conduct actions which U.S. EPA determines to be necessary. Respondents shall submit to U.S. EPA the results of all sampling or tests and all other data

generated by Respondents or their contractor(s), or on the Respondents' behalf during implementation of this Order.

Where work under this Order is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within 14 calendar days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondents shall immediately notify U.S. EPA if, after using their best efforts, they are unable to obtain such agreements. Respondents shall describe in writing their efforts to obtain access. U.S. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as U.S. EPA deems appropriate. Respondents shall reimburse U.S. EPA for all costs and attorneys' fees incurred by the United States in obtaining such access.

5. Record Retention, Documentation, Availability of Information

Respondents shall preserve all documents and information relating to work performed under this Order for six years following completion of the removal actions required by this Order. At the end of this six-year period and at least 60 days before any document or information is destroyed, Respondents shall notify U.S. EPA that such documents and information are available to U.S. EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to U.S. EPA. In addition, Respondents shall provide documents and information retained under this Section at any time before expiration of the six-year period at the written request of U.S. EPA.

6. Off-site Shipments

Respondents shall, prior to any off-facility shipment of oil, oil-contaminated soil, or oil-contaminated water, provide written notification of such shipment to the appropriate Illinois Environmental Protection Agency ("IEPA") official and to the U.S. EPA OSC. The notification shall include: (1) the name and location of the facility to which the oil will be shipped; (2) the type and quantity of the oil to be shipped; (3) the expected schedule for the shipment of the oil; and (4) the method of transportation of the shipment of oil. Respondents shall also notify the appropriate IEPA official of major changes in the shipment plan, such as a decision to ship the oil to another facility. All off-site shipments of oil, oil-contaminated soil and oil-contaminated water shall be transported, stored, and disposed of in accordance with all applicable U.S. Department of Transportation regulations, with the NCP and with all other applicable federal, state and local laws and regulations.

7. Compliance With Other Laws

Respondents shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations.

8. Emergency Response and Notification of Discharges

If any incident, or change in Facility conditions, during the activities conducted pursuant to this Order causes or threatens to cause a discharge of oil and/or hazardous substances from the Facility or an endangerment to the public health, welfare, or the environment, the Respondents shall immediately take all appropriate action to prevent, abate or minimize such discharge or endangerment caused or threatened by the discharge. Respondents shall also immediately notify the OSC or, in the event of his/her unavailability, shall notify the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, of the incident or Facility conditions. If Respondents fail to respond, U.S. EPA may respond to the discharge or endangerment. The United States reserves the right to recover costs associated with that oil or hazardous substance response.

Respondents shall submit a written report to U.S. EPA within seven business days after each discharge, setting forth the events that occurred and the measures taken or to be taken to mitigate any discharge or endangerment caused or threatened by the discharge and to prevent the recurrence of such a discharge. Respondents shall also comply with any other applicable notification requirements, including, if applicable, those in CWA Section 311, 33 U.S.C. § 1321, CERCLA Section 103, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11004.

9. Additional Work

In the event U.S. EPA or the Respondents determine that additional work, not otherwise included in the Work Plan, is necessary to protect human health and/or the environment, notification of additional work shall be provided to all parties.

Additional work determined to be necessary by Respondents shall be subject to the written approval of U.S. EPA.

Additional work determined to be necessary by Respondents and approved by U.S. EPA, or determined to be necessary by U.S. EPA and requested of Respondents, shall be completed by Respondents in accordance with the standards and specifications determined or approved by U.S. EPA. Respondents shall propose and submit a schedule for additional work for U.S. EPA approval. U.S. EPA may modify or determine the schedule for additional work. Additional work shall be performed in a manner consistent with the purposes and objectives of this Consent Order.

10. Paperwork Reduction Act

The information required to be maintained or submitted pursuant to this Order is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501 et seq.

VI. COMPLIANCE WITH THIS ORDER

Violation of any provision of this Order may subject Respondents to civil penalties of up to twenty-seven thousand five hundred dollars (\$27,500) per day of violation or an amount up to three times the costs incurred by the Oil Spill Liability Trust Fund, as provided in Section 311(b)(7)(B) of CWA, 33 U.S.C. § 1321(b)(7)(B). Should Respondents violate this Order or any portion hereof, U.S. EPA may carry out the required actions unilaterally, pursuant to Section 311(c) of CWA, 33 U.S.C. § 1321(c), and/or may seek judicial enforcement of this Order pursuant to Section 311(e) of CWA, 33 U.S.C. § 1321(e).

VII. AUTHORITY OF THE U.S. EPA ON-SCENE COORDINATOR

The OSC shall be responsible for overseeing the proper and complete implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, 40 C.F.R. § 300.120, and the authority contained in Section 311(c) of CWA, 33 U.S.C. § 1321(c), including the authority to:

- (1) remove or arrange for the removal of a discharge, and mitigate or prevent a substantial threat of a discharge, at any time;
- (2) direct or monitor all federal, state and private action to remove a discharge;
- (3) remove and, if necessary, destroy a vessel discharging or threatening to discharge, by whatever means available; and
- (4) determine when the removal is complete.

Absence of the OSC from the Facility shall not be cause for stoppage of work unless specifically directed by the OSC.

VIII. REIMBURSEMENT OF COSTS

Respondent shall reimburse the United States, upon written demand, for all response costs incurred by the United States in overseeing Respondents' implementation of the requirements of this Order. The National Pollution Funds Center may submit to Respondents on a periodic basis a bill for all response costs incurred by the United States with respect to this Order. Response costs shall consist of all costs incurred by U.S. EPA, its employees, agents, contractors, consultants and other authorized and/or designated representatives in connection with U.S. EPA's oversight and/or performance of the Work Plan.

Respondents shall, within thirty (30) calendar days of receipt of a bill and accounting, remit a

check for the amount of those costs made payable to the United States Coast Guard, or make such payment via electronic transfer, as directed by the U.S. EPA OSC. Interest at a rate established in 4 C.F.R. § 102.13, pursuant to 40 C.F.R. § 13.11(a), shall begin to accrue on the unpaid balance from the day after the expiration of the thirty-day period notwithstanding any dispute or an objection to any portion of the costs. Checks shall specifically reference the Facility and FPN (G00021) and be sent to:

United States Coast Guard - Oil
Re: FPN G00021
P.O. Box 650545
Pittsburgh, PA 15264-0545

Respondents shall simultaneously transmit a copy of the check to the Director, Waste Management Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590. Payments shall be designated as "Response Costs - Egan/Service Site" and shall reference the payor's name and address and the docket number of this Order.

Interest at a rate established by the Department of the Treasury pursuant to 31 U.S.C. § 3717 and 4 C.F.R. § 102.13 shall begin to accrue on the unpaid balance from the day after the expiration of the 30-day period notwithstanding any dispute or an objection to any portion of the costs.

IX. RESERVATION OF RIGHTS AGAINST RESPONDENTS

Except as specifically provided in this Order, nothing herein shall limit the power and authority of U.S. EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened discharge of oil at or from the Facility. Further, nothing herein shall prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Order. U.S. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondents in the future to perform additional activities pursuant to CWA or any other applicable law.

X. CLAIMS AGAINST OTHER PARTIES

Nothing in this Order shall constitute or be construed as a discharge from any claim, cause of action or demand in law or equity against any person, firm, partnership, venturer or corporation not bound by this Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, discharge, or disposal of any oil, solid wastes, pollutants, hazardous substances or contaminants found at, taken to, or taken from the Facility or for any other liability for costs or expenses related to the work.

XI. MODIFICATION

Modifications to any plan or schedule may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing within seven business days; however, the effective date of the modification shall be the date of the OSC's oral direction. Any other requirements of this Order may be modified in writing by mutual agreement of the parties.

If Respondents seek permission to deviate from any approved plan or schedule, Respondents' Project Coordinator shall submit a written request to U.S. EPA for approval outlining the proposed modification and its basis.

No informal advice, guidance, suggestion, or comment by U.S. EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondents shall relieve Respondents of their obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

XII. NOTICE OF COMPLETION

After submission of the Final Report required by Section V 3.5, Respondents may request that U.S. EPA provide a Notice of Completion of the work required by this Order. If U.S. EPA determines, after U.S. EPA's review of the Final Report, that all work has been fully performed in accordance with this Order, except for certain continuing obligations required by this Order (e.g., record retention), U.S. EPA will provide written notice to the Respondents. If U.S. EPA determines that any removal activities have not been completed in accordance with this Order, U.S. EPA will notify the Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan if appropriate to correct such deficiencies. The Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the U.S. EPA notice. Failure to implement the approved modified Work Plan shall be a violation of this Order.

XIII. SEVERABILITY

If a court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

XIV. OPPORTUNITY TO CONFER

Within three (3) business days after issuance of this Order, Respondents may request a conference with U.S. EPA. Any such conference shall be held within five (5) business days from the date of the request, unless extended by agreement of the parties. At any conference held pursuant to the request, Respondents may appear in person or be represented by an attorney or

other representative.

Regardless of whether a conference is held, Respondents may submit any information, arguments or comments (including justifications for any assertions that the Order should be withdrawn against a Respondent), in writing to U.S. EPA within two business days following the conference, or within seven business days of issuance of the Order if no conference is requested. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondents a right to seek review of this Order. Requests for a conference shall be directed to Thomas J. Martin, Associate Regional Counsel, at (312) 886-4273. Written submittal shall be directed as specified in Section V.2 of this Order.

XV. EFFECTIVE DATE

This Order shall be effective upon signature by the Director, Superfund Division, U.S. EPA Region 5.

IT IS SO ORDERED

BY: Thomas J. Martin
for William E. Muno, Director
Superfund Division
United States Environmental
Protection Agency
Region 5

DATE: 29 June 00

CWA-5- 2000 - 002